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May 3, 2023

VIA CM/ECF

The Honorable Leonard P. Stark
Circuit Judge, U. S. Court of Appeals for the Federal Circuit

Re: Xcoal Energy & Resources (“Xcoal”) v. Bluestone Energy Sales Corporation,
Southern Coal Corporation, and James C. Justice, II (“Defendants”), C.A. No. 18-
819-LPS

Dear Judge Stark:

Pursuant to the Court’s Oral Order dated April 26, 2023 (D.I. 212), the parties hereby submit the below joint status report.

Following the remote bench trial that stretched across six days in August and September 2020, this Court issued an Opinion and Order dated March 29, 2021 ruling in favor of Xcoal and against the Defendants on all three counts of the Complaint and all three counts of the Counterclaims. On April 14, 2021, the Court entered a Judgment (D.I. 167) (the “Judgment”) in the amount of \$6,814,105.30 in favor of Xcoal and against Defendants, jointly and severally. Subsequently, the Court entered an Amendment to Judgment (D.I. 185) (“the Amendment to Judgment”) dated September 28, 2021 in the amount of \$10,005,283.08. In addition to the original judgment amount, the Amendment to Judgment included awards for pre-judgment interest, post-judgment interest, and attorneys’ fees and costs.

On October 15, 2021, Defendants filed an Appeal with the United States Court of Appeals for the Third Circuit. (*See* D.I. 196). After the appeal was fully briefed, the Third Circuit entered an Order dated July 21, 2022 ruling in Xcoal’s favor and affirming the Amendment to Judgment. (*See* 3d Cir. D.I. 40-1). By Order dated August 16, 2022, the Third Circuit denied a request by Defendants for a Panel Rehearing. (3d Cir. D.I. 43). Subsequently, Xcoal filed a Motion to recover attorneys’ fees in connection with the appeal. (3d Cir. D.I. 45). Defendants did not respond to Xcoal’s Motion. By Order dated September 27, 2022, the Third Circuit awarded Xcoal attorneys’ fees in the amount of \$88,866.24. (3d Cir. D.I. 46). This increased the total judgment against Defendants to \$10,094,149.32, plus post-judgment interest. Although Defendants indicated that they would seek review of the matter before the Supreme Court of the United States, Defendants did not file a writ of certiorari and the deadline to do so lapsed.

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Despite demand, Defendants did not issue payment in connection with the judgments. As a result, Xcoal demanded payment from the Federal Insurance Company pursuant to a Supersedeas Bond (D.I. 189-2) obtained by Defendants in connection with Defendants' appeal of this Court's ruling. Xcoal has collected \$8,176,927.00 of the total judgment amount of \$10,094,149.32. This amount was provided by the Federal Insurance Company pursuant to the Supersedeas Bond and was the maximum penal sum collectable under the terms of the Bond. The balance of the total judgment due is \$1,917,222.32, plus post-judgment interest. Defendants have not indicated that payment of this amount is forthcoming.

Xcoal has stated its intention to execute against Defendants as to this amount, and on March 22, 2023, served Defendants with Interrogatories and Requests for the Production of Documents in Aid of Execution (the "Discovery Requests"). One day after Xcoal served the Discovery Requests, Defendants' lead trial counsel from McGuire Woods LLP withdrew their appearance. (*See* D.I. 211).

Defendants have not responded to the Discovery Requests, and until today had not responded to Xcoal's efforts to meet and confer regarding the same. Defendants' counsel for the first time today requested an extension until May 22, 2023 to respond and produce documents pursuant to the Discovery Requests. Xcoal has consented to Defendants' request, but reserves all of its rights with respect to Defendants' failure to timely respond to the Discovery Requests, including without limitation that all objections thereto have been waived.

Should Your Honor have any questions, counsel is available at the convenience of the Court.

Sincerely yours,

/s/ Geoffrey G. Grivner

Geoffrey G. Grivner (#4711)

GGG/

cc: All Counsel of Record via ECF